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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA,)	Case 1:18-cr-00457
)	
Plaintiff,)	
)	
v.)	Alexandria, Virginia
)	July 15, 2019
BIJAN RAFIEKIAN,)	9:09 a.m.
)	
Defendant.)	Day 1
)	Pages 1 - 77

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE ANTHONY J. TRENGA
UNITED STATES DISTRICT COURT JUDGE
AND A JURY

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

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1 THE CLERK: Criminal Case 1:18-cr-457, *United*
2 *States v. Bijan Rafiekian.*

3 Counsel, will you please note your
4 appearances for the record.

5 MR. GILLIS: Good morning, Your Honor. Jim
6 Gillis, Evan Turgeon, John Gibbs, and Special Agent
7 Bryan Alfredo for the government.

8 THE COURT: Good morning.

9 MR. GILLIS: If I may, we may have another
10 agent joining us today, Jessica Taylor.

11 THE COURT: All right. Very good.

12 MR. MACDOUGALL: Good morning, Your Honor.

13 THE COURT: Good morning.

14 MR. MACDOUGALL: The defendant, Bijan
15 Rafiekian, is present. Mark MacDougall, Robert Trout,
16 and Stacey Mitchell for the defense.

17 THE COURT: All right. Welcome to everyone.
18 I can tell from the filings everyone had a nice
19 leisurely weekend. We have a couple of matters.

20 Mr. Gillis, I see you filed a motion to
21 compel. Is that right?

22 MR. GILLIS: We did, Your Honor, yesterday.

23 THE COURT: All right. Anything else that
24 you want to raise preliminarily?

25 MR. GILLIS: Yes, Your Honor. First, we ask

1 that the Court preclude the defense from referencing
2 any -- at least in terms of the opening statements. We
3 can discuss later. In general, we think it would apply
4 to the entire trial. But at least for the opening
5 statements, we ask that the judge preclude the defense
6 from referring to any charges against Flynn or his
7 sentence or the sentence that may result as a
8 consequence of the charges against the defendant.

9 We also ask that the Court prevent the
10 defense counsel from mentioning in opening that the
11 government would not be calling General Flynn.

12 MR. TROUT: It's moot, Your Honor.

13 THE COURT: All right. Very good.

14 MR. GILLIS: Thank you.

15 THE COURT: Any other preliminary matters you
16 want the Court to raise?

17 MR. GILLIS: None, other than the ones we
18 filed, Your Honor.

19 THE COURT: All right. Mr. MacDougall, any
20 issues you want the Court to address right now?

21 MR. MACDOUGALL: Just a couple of
22 administrative things, Your Honor.

23 THE COURT: Yes.

24 MR. MACDOUGALL: Mr. Trout has been doing
25 this slightly longer than I have. When he told me, I

1 remembered that there is a tradition that if the
2 defense introduces an exhibit or any other evidence in
3 the course of the government's case, the defense is
4 waiving Rule 29; although, I understand that may be
5 archaic and no longer applicable. I wanted to inquire
6 as to the Court's view on that.

7 THE COURT: No. The Court doesn't adhere to
8 that rule.

9 MR. MACDOUGALL: Your Honor, at least I have
10 not tried a case in this court before. I know
11 Ms. Mitchell hasn't either. What's your preference
12 with regard to objections? Speaking objections or at
13 the bench?

14 THE COURT: No. At the bench, if it's at all
15 substantive.

16 MR. MACDOUGALL: Thank you, Your Honor.

17 THE COURT: Have you-all worked out the
18 possible issues with your witnesses, Mr. MacDougall, in
19 terms of having them testify out of order, if
20 necessary?

21 MR. MACDOUGALL: We have not yet. Just in
22 anticipation of the defense case, if it goes forward
23 being on Thursday, we will be okay if it goes forward.
24 We will just stay in touch with Mr. Gillis if that
25 happens, Your Honor.

1 THE COURT: All right. I've reviewed the
2 motion to compel. Mr. Gillis, do you want to be heard
3 further on that or Mr. Gibbs or Mr. Turgeon?

4 MR. TURGEON: Yes. Good morning, Your Honor.

5 Just briefly, I just wanted to draw Your
6 Honor's attention to one thing in particular that the
7 government does not have, and those are e-mails from
8 the defendants to Covington or Kristen Verderame.

9 THE COURT: I guess the question I have is,
10 how is it appropriate for the Court to enforce a grand
11 jury subpoena at this point? That's what I understand
12 this is within the context of. Correct?

13 MR. TURGEON: Yes, Your Honor. This is two
14 grand jury subpoenas after Your Honor's order.

15 THE COURT: Right. So how is it appropriate
16 for the Court to, even if the Court were to give some
17 relief, enforce a grand jury subpoena at this point?

18 MR. TURGEON: Your Honor, Mr. Gillis informs
19 me that there is case law stating that a grand jury
20 subpoena remains in effect even after the grand jury
21 has been dismissed. So that would be the case here.

22 THE COURT: Obviously, the issue is
23 timeliness. This has been percolating for months now.

24 MR. TURGEON: Yes, Your Honor, but it was
25 only last Tuesday that Your Honor essentially gave us

1 permission to explore these issues.

2 THE COURT: Have you discussed this with the
3 Covington lawyers?

4 MR. TURGEON: We have, Your Honor. They
5 referred us to FIG lawyers, who I believe are now
6 present in court --

7 THE COURT: All right.

8 MR. TURGEON: -- to determine whether or not
9 to release these materials.

10 However, I would note that the materials
11 we're seeking we believe are in the possession of
12 Covington and not part of the materials from FIG
13 servers or anything like that.

14 THE COURT: All right. Are the lawyers
15 representing FIG here?

16 Yes.

17 MR. WARRINGTON: Good morning, Your Honor.

18 THE COURT: Good morning.

19 MR. WARRINGTON: David Warrington on behalf
20 of Flynn Intel Group or FIG.

21 THE COURT: Yes.

22 MR. WARRINGTON: We have talked to the
23 government about that. As you've seen in our papers,
24 they brought this to our attention Friday afternoon and
25 then yesterday. Obviously, you've seen our filing. We

1 would argue that it is a matter of timeliness,
2 especially in light of the fact that the government has
3 had Covington lawyers cooperating with them for over a
4 year. They've specifically been dealing with the
5 topics that are within -- what I would argue, within
6 the scope of the Court's order from July 9, vis-a-vis
7 the topic matters of the subpoenas which are much
8 broader than what would be allowable under the Court's
9 order. So at this late date, I think the government
10 has had access to all of that stuff.

11 From a practical standpoint, being new
12 counsel in this, I don't even have all the Covington
13 files yet. That's been requested. I don't have it.
14 It's a rather large amount of data that we're still
15 trying to process and put in a platform for review.

16 So at this late date, I would ask the Court
17 to quash the subpoena.

18 THE COURT: All right. Mr. Turgeon, anything
19 further on this?

20 MR. TURGEON: No, Your Honor. Essentially,
21 the e-mails that we're seeking is a very small subset.
22 It's communications from the defendant to Covington or
23 Verderame -- or rather communications between the
24 defendant and Covington and Verderame.

25 THE COURT: All right. The Court is not

1 going to enforce the grand jury subpoena. I think this
2 comes too late. I think these are issues that should
3 have been dealt with and worked through. As I
4 understand it, there's been a lot of exchange of
5 information already in the government's possession. So
6 the Court is going to deny the motion.

7 Anything else?

8 MR. WARRINGTON: Thank you, Your Honor.

9 THE COURT: All right. We are scheduled to
10 be in Judge Ellis' courtroom for the *voir dire*. We'll
11 work through that in a way that makes the most sense
12 depending on what kind of answers we get to various
13 questions and what individual follow-up needs to be
14 had. It may be at some point we'll simply adjourn to
15 chambers and bring the jurors in individually if I deem
16 that appropriate. Otherwise, we'll proceed as
17 efficiently as we can through that process.

18 I think that's about it.

19 Anything else?

20 Yes.

21 MR. BINNALL: Your Honor, may I approach?

22 THE COURT: Yes.

23 MR. BINNALL: Jesse Binnall on behalf of
24 General Flynn, Your Honor.

25 Just a quick logistical issue. We understand

1 that -- the Court's order of July 9 regarding privilege
2 and work product. That being said, there's still going
3 to be several witnesses on the stand that used to
4 represent General Flynn and FIG. To the extent that
5 it's necessary -- although, it may be very -- I'm
6 hoping it won't come to this -- that we have to assert
7 any privilege that we would be outside the Court's
8 July 9 order while those witnesses are on the witness
9 stand, logistically, how would the Court like us to do
10 that, and where would the Court like us to sit?

11 THE COURT: I'll think about it. These would
12 come within the context of either the Covington lawyers
13 or Ms. Verderame's testimony?

14 MR. BINNALL: Yes, Your Honor.

15 THE COURT: All right. Well, I think the
16 scope of the Court's ruling was fairly clear, and
17 certainly, Covington lawyers or Ms. Verderame in the
18 first instance would be aware of what would spill over
19 into the possible privilege area. I would expect them
20 to alert the Court as those issues arise.

21 I understand your interest. We'll just think
22 about the logistics. We'll review it before those
23 witnesses take the stand.

24 MR. BINNALL: Thank you very much.

25 THE COURT: All right. Anything else?

1 MR. MACDOUGALL: Nothing from the defense,
2 Your Honor.

3 THE COURT: All right. Let me ask this: The
4 Court typically, once we impanel a jury, tries to
5 outline the elements of the offenses for them so they
6 can follow the evidence. I know there's some basic
7 disputes between the parties about what those elements
8 should be and what ultimately the jury should be told
9 by way of an instruction.

10 The Court's purpose in the beginning of the
11 case is not so much to give them a detailed instruction
12 but to simply alert them and give them some orientation
13 as to the legal issues. What I'd like for you-all to
14 do is if you could confer among yourselves and see if
15 you couldn't come up with an articulation, in very
16 brief summary form, which would be presented to the
17 jury as a very brief summary form of what the elements
18 of the conspiracy and Count 2 would be.

19 I think you could do that. I could fashion
20 it myself, but I would rather you-all try to do it
21 yourselves. I think you can do it fairly quickly.
22 Just talking about the basic elements of that without
23 necessarily getting into the substance of what some of
24 those elements would be, which would be the subject of
25 the final instructions.

1 MR. GILLIS: Your Honor, did you say that you
2 have fashioned one already?

3 THE COURT: I can and I started, but I'd like
4 for you-all to see if you can't just agree on a summary
5 of what the elements would be as to Count 1 and
6 Count 2 --

7 MR. GILLIS: Yes, sir.

8 THE COURT: -- sufficient to give them some
9 orientation as to the significance of the evidence that
10 they're going to hear.

11 MR. GILLIS: Yes, Your Honor. We'll do our
12 best.

13 THE COURT: All right.

14 MR. TROUT: Your Honor, it's been a couple of
15 years.

16 THE COURT: Yes.

17 MR. TROUT: Could the Court give a little
18 refresher on the logistics of actually picking the
19 jury?

20 THE COURT: Yes. What we'll do is after the
21 Court decides any for cause strikes and the parties
22 exercises their for cause strikes, we'll then put 12
23 people into the jury box. Then everybody will have an
24 opportunity to exercise their peremptory challenges.

25 There are no back strikes, which means that

1 both sides get one crack at each juror. So if you
2 don't strike a juror for the first time that the juror
3 is called, you can't in a subsequent round of strikes
4 strike that juror. So everybody gets one crack at a
5 juror.

6 Then once somebody is stricken, there will be
7 another name called to fill up the box to 12. Then
8 we'll have another round of peremptory challenges,
9 which will be limited to the new jurors that have been
10 added to the panel.

11 Then we're going to have two alternates.
12 After we get 12, then we'll call four individuals, and
13 each side gets one strike as to the alternates.

14 All right. Any questions about that?

15 (No response.)

16 THE COURT: All right. Great. Let's
17 reconvene at 10:00 in Courtroom 900.

18 All right. The Court stands recessed.

19 (Recess from 9:20 a.m. until 10:17 a.m.)

20 (*Voir dire.*)

21 (The jury panel exits at 1:35 p.m.)

22 THE COURT: Have you-all had a chance to talk
23 about the elements issue I raised?

24 MR. GIBBS: Judge, we did. I think we've
25 come to an agreement. Counsel was putting together the

1 edits we made.

2 THE COURT: Okay. Great.

3 How long for opening statement do you want?

4 MR. GIBBS: Judge, I'll be doing the opening.

5 I think I timed it out to about 35, 40 minutes maybe.

6 THE COURT: I'll give both sides 35, 40

7 minutes.

8 MR. GIBBS: That's fine, Judge.

9 THE COURT: All right. I'll stand in recess
10 until 2:15.

11 (Recess from 1:35 p.m. until 2:34 p.m.)

12 (A jury is duly impaneled and sworn.)

13 THE COURT: Please be seated.

14 Ladies and gentlemen, for those of you who
15 have not been selected, you're excused with the thanks
16 of the Court. You may leave the courtroom.

17 (People exit.)

18 THE COURT: Ladies and gentlemen, we're going
19 to take a short recess in a moment, but before we do, I
20 want to give you some idea how we're going to proceed.
21 After the recess, we're going to reconvene in another
22 courtroom. We are going to be in my regular courtroom,
23 which is 701. Mr. Burns will escort you down there
24 where we will try the case.

25 The case will proceed from day to day. We

1 will end each day, depending on where the evidence is,
2 around 5:30 or 6:00. It will be my intention not to go
3 past 6:00 unless absolutely necessary. In the morning,
4 we'll begin at 9:30. You should make whatever efforts
5 you need to in order to get to the courthouse around
6 9:15. We'll take a morning break around 11:15, 11:30.
7 We'll recess for lunch at 1:00 for an hour reconvening
8 at 2:00. We'll take a break in the afternoon around
9 3:30.

10 If any of you need a break at any other time,
11 just raise your hand, and I will try to accommodate you
12 as best as I can.

13 You will see in the jury room a telephone
14 that you could use just to let your employer or your
15 family know that you will be occupied for a few days.
16 It is not to be used for any other purpose, not to
17 conduct any other type of business or any social
18 conversations.

19 When we come back and reconvene, I'll give
20 you some preliminary instructions about the case. Then
21 we'll begin with opening statement first by the United
22 States and then by Mr. Rafiekian's counsel.

23 So with those very limited instructions,
24 you're excused. Let me say now for the first time what
25 I'll say every time we take a recess. That is, even

1 though you know very little about this case, do not
2 begin to discuss it. Don't talk among yourselves about
3 what the case may or may not be. Don't speculate about
4 what the evidence is. You are not to discuss this case
5 among yourselves until you've heard all the evidence
6 and you've been instructed as to the law and you've
7 begun your formal deliberations.

8 So with that, you're excused.

9 (The jury exits at 3:30 p.m.)

10 THE COURT: All right. We'll take a
11 20-minute recess and reconvene in Courtroom 701.

12 (Recess from 3:31 p.m. until 3:55 p.m.)

13 (The jury is not present.)

14 THE COURT: Are we ready to proceed?

15 MR. GIBBS: We are, Your Honor.

16 MR. TROUT: Yes, Your Honor.

17 THE COURT: All right. Let's bring the jury
18 out.

19 (The jury enters at 3:55 p.m.)

20 THE COURT: You should take the seats that
21 you had up in the other courtroom.

22 All right. Please be seated.

23 THE COURT SECURITY OFFICER: Too many in the
24 front row and not enough in the back.

25 THE COURT: All right. Well, this is fine

1 for now. In the morning, we'll do seven and seven.

2 All right.

3 Ladies and gentlemen, as I indicated to you,
4 I am going to give you now some very preliminary
5 instructions to guide you in your participation of the
6 trial. What I say now is intended to serve only as an
7 introduction to the trial. It's not a substitute for
8 the detailed instructions that I will give you at the
9 end of the case on the law.

10 It will be your duty to find from the
11 evidence what the facts are. You and you alone will be
12 the judges of the facts. You will then have to apply
13 those facts of the law as the Court will give it to
14 you. You must follow that law whether you agree with
15 it or not. Nothing the Court may say or do during the
16 course of the trial is intended to indicate or should
17 be taken by you as indicating what your verdict should
18 be.

19 The evidence from which you will find the
20 facts will consist of the testimony of witnesses,
21 documents, and other things received into the record as
22 exhibits and any facts that the lawyers agree to or
23 stipulate to or that the Court may instruct you to
24 find.

25 There are certain things that are not

1 evidence and must not be considered by you, and I will
2 list them for you now:

3 First, the statements, arguments, questions
4 by the lawyers are not evidence.

5 Objections to questions are not evidence.
6 Lawyers have an obligation to their client to make
7 objections when they believe evidence being offered is
8 improper under the rules. You should not assume that a
9 lawyer making the objection is improperly trying to
10 keep some pertinent information from you, and you
11 should not hold it against the lawyer who makes an
12 objection.

13 You also should not be influenced by the
14 objection or by the Court's ruling on it. If the
15 objection is sustained, that is if the Court agrees
16 with the objection, you must not consider the question,
17 any partial answer to the question, or the exhibit
18 which was objected to. If the objection is overruled,
19 that is if the Court disagrees with the objection,
20 you'll treat the answer or exhibit like any other. If
21 you are instructed that some item of evidence is
22 received for a limited purpose only, you must follow
23 that instruction.

24 Next, the testimony that the Court has
25 excluded or told you to disregard is not evidence and

1 must be not considered by you.

2 Anything you may have seen or heard outside
3 the courtroom is not evidence and must be disregarded.
4 You are to decide this case solely on the evidence
5 presented here in the courtroom.

6 In that regard, there are two kinds of
7 evidence. There is direct evidence and circumstantial
8 evidence. Direct evidence is direct proof of a fact,
9 such as the testimony of an eyewitness. Circumstantial
10 evidence is proof of facts from which you may infer or
11 conclude that other facts exist. I will give you
12 further instructions on this as well at the end of the
13 case, but keep in mind that you may consider both kinds
14 of evidence.

15 In considering this case, you will have to
16 make judgments about the believability of witnesses'
17 testimony. It will be up to you to decide which
18 witnesses to believe, which witnesses not to believe,
19 how much of any witness' testimony to accept or reject.
20 In considering the weight and value of the testimony of
21 any witness, you may take into account, first, the
22 appearance, attitude, and behavior of a witness, the
23 interest that witness may have in the outcome of the
24 trial, the relationship of the witness to any party in
25 the case, the inclination of the witness to speak

1 truthfully or not as you determine that to be, the
2 probability or improbability of the witness' statement,
3 and all other facts and circumstances in evidence.
4 Thus, you may give the testimony of any witness such
5 weight and value as you may determine the testimony of
6 such witness is entitled to receive.

7 Please pay careful attention to the testimony
8 of witnesses because, contrary to what you may have
9 seen on television or in the movies, witnesses will not
10 be called back to testify, and you won't be provided
11 transcripts of their testimony during your
12 deliberation.

13 As you know, this is a criminal case, and
14 there are three basic rules about a criminal case that
15 you must keep in mind:

16 The first is that the defendant,
17 Mr. Rafiekian, is presumed innocent until proven
18 guilty. The indictment brought by the government
19 against Mr. Rafiekian is only an accusation. It's
20 nothing more. It's not proof of guilt or anything
21 else. Mr. Rafiekian, therefore, starts out with a
22 completely clean slate.

23 Second, the burden of proof is on the
24 government until the very end of the case. A defendant
25 has no burden to prove his innocence or to present any

1 evidence or to testify. Since a defendant has the
2 right to remain silent, the law prohibits you from
3 arriving at your verdict by considering that a
4 defendant may not have testified.

5 Third, as I indicated earlier, the government
6 must prove a defendant's guilt beyond a reasonable
7 doubt. I will give you further instructions on this
8 point later, but bear in mind that in this respect, a
9 criminal case is different from a civil case.

10 I also want to now give you some very brief
11 descriptions of the applicable law. I will give you
12 detailed instructions on the law at the end of the
13 case, and those instructions will control your
14 deliberations and decision. In order to help you
15 follow the evidence, I will now give you a brief
16 summary of the elements of the offenses that the
17 government must prove in order to make its case.

18 Mr. Rafiekian is charged with a conspiracy to
19 act as an agent of a foreign government, that is the
20 government of Turkey, and to make false statements and
21 willful omissions in a filing under what's called the
22 Foreign Agents Registration Act, which you will
23 probably hear referred to as FARA, F-A-R-A.

24 Count 1 of the indictment charges that
25 conspiracy, and the elements of that conspiracy: To

1 act as an agent of a foreign government and to make
2 false statements and willful omissions in a FARA filing
3 are, first, that a conspiracy, agreement, or
4 understanding to act as an agent of a foreign
5 government except --

6 Let me start again: The first element is
7 that there was a conspiracy, agreement, or
8 understanding to act as an agent of a foreign
9 government except as engaged in a legal commercial
10 transaction without prior notification to the attorney
11 general and to make false statements and willful
12 omissions in a FARA filing, as described in the
13 indictment, and that conspiracy was formed, reached, or
14 entered into by two or more persons.

15 So a conspiracy is nothing more than an
16 agreement to do what has been alleged here.

17 The second element is that some time during
18 the existence or life of the conspiracy, agreement, or
19 understanding, the defendant knew the purposes of the
20 agreement.

21 Third, with knowledge of the purposes of the
22 conspiracy, agreement, or understanding, the defendant
23 then deliberately joined the conspiracy, agreement, or
24 understanding, and at some time during the existence or
25 life of the conspiracy, agreement, or understanding,

1 one of its alleged members knowingly performed one of
2 the overt acts charged in the indictment and did so in
3 order to further advance the purposes of the agreement.

4 The indictment also charges in Count 2 the
5 offense of knowingly acting in the United States as an
6 agent of a foreign government without prior
7 notification to the attorney general.

8 The elements of that offense are, one, that
9 the defendant acted in the United States as an agent of
10 a foreign government, except to the extent he was
11 engaged in a legal commercial transaction; two, the
12 defendant failed to notify the attorney general of the
13 United States that he would be acting in the United
14 States as an agent of the foreign government prior to
15 so acting; three, that the defendant acted knowingly;
16 and fourth, that the defendant acted, at least in part,
17 as an agent for a foreign government in the Eastern
18 District of Virginia during the time period alleged in
19 the indictment.

20 Let me now say a few words about your conduct
21 as jurors:

22 First, I instruct you that during the trial,
23 you're not to discuss this case with anyone or permit
24 anyone to discuss it with you. Until you retire to the
25 jury room at the end of the case to deliberate on your

1 verdict, you are simply not to talk about this case.

2 Second, do not read or listen to anything
3 touching upon this case in any way. If anyone tries to
4 talk to you about it, bring it to the Court's attention
5 immediately.

6 Third, I know many of you use cell phones and
7 other Internet tools of technology. You must not use
8 these tools to communicate electronically with anyone
9 about this case. That includes your family and
10 friends. You may not communicate with anyone about the
11 case on your cell phones or through e-mail or
12 Blackberry, iPhones, text messaging, Twitter, through
13 any of the blogs or websites, through any Internet chat
14 rooms, or by way of any other social networking
15 websites, such as Facebook, LinkedIn, Instagram, or
16 YouTube.

17 Also, you are not to conduct any research
18 during the evening recesses about anything you may have
19 heard in court or anything that may have gotten your
20 interest. Don't conduct any research on your own about
21 anything you may have heard during the course of the
22 trial.

23 Finally, do not form any opinion until all
24 the evidence is in. Keep an open mind until you start
25 your deliberations at the end of the case.

1 Each of you either has or will be provided a
2 notebook. If you want to take notes during the course
3 of the trial, you may do so, but please appreciate that
4 it's sometimes difficult to take detailed notes and pay
5 attention to what the witnesses are saying at the same
6 time. So if you do take notes, be sure that your
7 note-taking doesn't interfere with your listening
8 attentively to the evidence in the case.

9 Also, if you do take notes, do not discuss
10 your notes with anyone before you begin your
11 deliberations.

12 Do not take your notes with you at the end of
13 the day. Leave them in the jury room where they'll be
14 secured.

15 Also, if you do take notes, please understand
16 that your notes are not evidence and should not take
17 precedence over your independent recollections of the
18 evidence.

19 Also, remember that it's your own individual
20 responsibility to listen carefully to all the evidence.
21 So if you do not take notes, you cannot give this
22 responsibility to anyone who is taking notes. We
23 depend on the judgment of each of you to listen to all
24 of the evidence. Each of you must remember all of the
25 evidence in this case.

1 During the trial and beginning with these
2 preliminary instructions, you will hear me use a few
3 terms, some of which you have heard before, some you
4 may not have. You will sometimes hear me refer to
5 counsel. Counsel is simply another way of referring to
6 the lawyers or the attorneys. I will sometimes refer
7 to myself as the Court. The prosecution and defendant
8 are called the parties to the case.

9 When we say "admitted into evidence" or
10 "received into evidence," that simply means that a
11 particular exhibit or piece of testimony is now a part
12 of the trial and may be considered by you when making
13 the decisions you must make in the case.

14 The terms "burden of proof" and "sustaining
15 its burden of proof" means the obligations of proving
16 its case. In this trial, the government's obligation
17 is to produce proof beyond a reasonable doubt.

18 Let me now explain to you how the trial will
19 proceed. Once I complete these preliminary
20 instructions, the government will make an opening
21 statement, which is simply an outline to help you
22 understand the evidence as it comes in. Next,
23 Mr. Rafiekian's attorneys may make an opening
24 statement. Opening statements are neither argument,
25 nor evidence.

1 Once the opening statements are done, then
2 the United States, the government, may then present its
3 witnesses, and counsel for Mr. Rafiekian may
4 cross-examine them. Following the government's case,
5 the defense may present witnesses whom the government
6 may cross-examine.

7 After all the evidence is in, the Court will
8 instruct you on the law, and then the attorneys will
9 present their closing arguments to you to summarize and
10 interpret the evidence for you, following which you'll
11 retire and deliberate on your verdict.

12 It's important for you to understand that no
13 statement, ruling, remark, or comment which I may make
14 during the course of this trial is intended to indicate
15 my opinion as to how you should decide this case or is
16 intended to influence you in any way in your
17 determination of the facts.

18 At times during the trial, I will need to
19 privately confer with the lawyers about evidentiary and
20 procedural issues. During these conferences, both here
21 at the side of the bench and out of your presence while
22 you're in the jury room, it is not our intention to
23 hide anything from you but simply to determine how
24 certain issues are to be handled. So please be
25 patient. We are only trying to ensure that the case is

1 being conducted fairly.

2 It is important to me that your time be used
3 efficiently and that you not spend a significant amount
4 of time outside of the courtroom during the trial, but
5 there may be developments that require matters to be
6 heard outside of your presence. I will certainly do
7 everything I can to keep that time to a minimum and
8 move this case along smoothly.

9 The attorneys and the parties will not speak
10 with you. If you happen to run into the lawyers or any
11 of the parties in the courthouse or approaching the
12 courthouse and when they see you, they make a sharp
13 turn and walk the other way to avoid you, don't hold it
14 against them. Don't think they're being discourteous.
15 They're simply following my instructions not to
16 interact with you during the course of this trial. It
17 simply does not look appropriate for one side or the
18 other to be speaking with any of you no matter how
19 innocent or trivial those conversations may be.

20 Until this case is submitted to you to begin
21 deliberations, you must, again, not discuss it with
22 anyone at all, even your fellow jurors. After it's
23 submitted, you must discuss this case only in the jury
24 room with your fellow jurors.

25 It's important that you keep an open mind and

1 not decide any issue in this case until the entire case
2 has been submitted to you, you've heard all the
3 evidence, and you've received the final instructions
4 regarding the law you must apply to the evidence.

5 Again, please keep in mind that your job is
6 to decide all the factual information in the case, like
7 who should be believed and who should not be believed.
8 You are the judges of the facts.

9 I will decide all the legal questions in this
10 case, like what testimony or exhibits are to be
11 received into evidence and which are not. Please do
12 not concern yourself with the legal questions that the
13 Court will decide.

14 At the close of the evidence, as I indicated
15 to you, I will give you your complete and final
16 instructions, which will be much more detailed than
17 these preliminary instructions, which you must use to
18 guide you in reaching your decisions.

19 You can now proceed with opening statement.

20 MR. GIBBS: Thank you, Your Honor.

21 THE COURT: Mr. Gibbs.

22 OPENING STATEMENT BY MR. GIBBS

23 MR. GIBBS: As a nation, we value
24 transparency. Today we are beginning a very public
25 criminal trial. Our legislators meet in public. There

1 are laws and regulations requiring public access to
2 various government records and proceedings.

3 By the same token, we require transparency
4 from foreign governments when they engage in activities
5 here in this country. In particular, when a foreign
6 government task its agents to engage in conduct on its
7 behalf in the United States, we require these agents to
8 identify themselves to the Department of Justice and to
9 reveal what they are doing. Failure to do so is a
10 crime.

11 In the summer and fall of 2016, the
12 defendant, Bijan Rafiekian, acted as an agent of the
13 government of Turkey to advance one of Turkey's most
14 important foreign policy goals, the extradition from
15 the United States of an individual living in the United
16 States. But Mr. Rafiekian and his associates never
17 notified the Department of Justice of what they were
18 doing.

19 And once their activities came to light and
20 the Department of Justice began to make inquiries,
21 Mr. Rafiekian and his colleagues lied. They did not
22 disclose that they were acting on behalf of the
23 government of Turkey, and they did not disclose that
24 they were aiding Turkey in its efforts to get custody
25 of this person.

1 Instead, they falsely asserted that they were
2 acting on behalf of a Dutch corporation and that their
3 purpose was merely to research and build confidence in
4 the business climate in Turkey. That conduct is why we
5 are here today.

6 Three years ago today, on July 15, 2016, the
7 nation of Turkey erupted in chaos and violence. Media
8 reports indicated that hundreds were killed, thousands
9 were wounded, and for a time, the government struggled
10 to maintain control.

11 Once order was restored, the Turkish
12 government publicly proclaimed that the violence was
13 the result of an attempted coup and that it was the
14 handiwork of one man, Fethullah Gulen.

15 Who is Fethullah Gulen? As you will hear in
16 the course of this trial, he is a Turkish citizen, an
17 imam, a writer, and a political figure. He is the
18 leader of an organization that runs a network of
19 schools and charitable organizations in Turkey. His
20 organization runs a number of charter schools here in
21 the United States.

22 And for the past two decades, Fethullah Gulen
23 has lived in this country. And for Turkey, this has
24 not sat well. For years, it has accused Gulen for
25 plotting the overthrow of the government of Turkey and

1 leading an armed terrorist group, the so-called
2 Gulenist Movement. While Gulen has denied the
3 allegations, the Turkish government has repeatedly
4 asked the United States to extradite him back to
5 Turkey.

6 Now, following the events of July 15, the
7 Turkish government redoubled those efforts. By
8 July 23, they had submitted a formal request asking for
9 Gulen's extradition. But after reviewing that request,
10 the U.S. Department of Justice determined that it had
11 not met the legal standard for extradition, and absent
12 more compelling evidence, it would not be approved.

13 Now we turn to the defendant, Bijan
14 Rafiekian, sitting right over here. In 2016, the
15 defendant held the positions of vice-chairman,
16 director, secretary, and treasurer of the Flynn Intel
17 Group or FIG. FIG was a company headquartered here in
18 Alexandria, Virginia, that offered services to its
19 clients based on its national security expertise.
20 Former General Michael Flynn was FIG's chairman and
21 CEO.

22 Now, at the same time that the Turkish
23 government was very openly seeking to convince the
24 United States to extradite Gulen back to Turkey, the
25 defendant was also focused on Gulen but in a much less

1 public way. On July 27, 2016, 12 days after the failed
2 coup, he sent an e-mail to an individual named Ekim
3 Alptekin. As you will hear, Ekim Alptekin and the
4 defendant are both charged in the indictment in this
5 case. Alptekin is a dual Turkish-Dutch citizen who
6 lives in Istanbul, Turkey, and who is the sole owner of
7 a company in the Netherlands called Inovo.

8 The defendant's e-mail to Alptekin on July 27
9 was captioned All Good To Go. In the e-mail, he told
10 Alptekin: We are ready to engage on what needs to be
11 done. Turkey's security and stability is extremely
12 important to world security.

13 Now, as you will hear, during the course of
14 this trial, Turkey's president is named Recep Tayyip
15 Erdogan, RTE.

16 In his e-mail on July 27, the defendant told
17 Alptekin: RTE can lead the campaign against radical
18 Islam to protect the image of Islam. No other leader
19 in the world of Islam has the power to lead this
20 campaign. After telling Alptekin that we are all on
21 the same page, he concluded: Looking forward to
22 working together again. At the right time, I will
23 include our partners in the communications.

24 Alptekin responded two days later. He told
25 the defendant: Finally on my way back to Istanbul. I

1 met with MC and explained. They are likely to travel
2 to D.C. next week. He is interested in exploring this
3 seriously, and it is likely he will want to meet with
4 you and MF. We agreed to meet again before he leaves
5 for D.C., and he asked me to formulate what kind of
6 output we can generate on the short and midterm, as
7 well as an indicative budget.

8 Now, we'll come back to MC in a little bit,
9 but in that e-mail, after asking the defendant if he
10 could do a Skype call the next day, Alptekin concluded:
11 Needless to tell you, but he asked me not to read
12 anyone else for the time being and keep this
13 confidential.

14 As you will hear, Alptekin and the defendant
15 were true to their words. They worked hard to keep
16 this confidential. They only discussed Turkey's
17 involvement in the project with a limited number of
18 people, and they used various types of encryption to
19 ensure that they could communicate securely about
20 Gulen.

21 Now, the next day, July 30, the defendant
22 sent Alptekin an e-mail with the subject line Truth: I
23 told him it was my pleasure continuing our conversation
24 today. General Flynn and I have discussed the broad
25 contours of the Truth campaign.

1 The defendant then set out nine bullet points
2 for what he termed Phase Zero. He assured Alptekin:
3 At this time, the conversation shall be limited to you,
4 General Flynn, and myself. These are extremely
5 critical times, and our key motivation is to make sure
6 that we do what we can to secure a better future for
7 our grandchildren.

8 The following day, Alptekin sent the
9 defendant an article which he described as a must read.
10 The article is entitled *Is The U.S. Behind Fethullah*
11 *Gulen?*

12 On August 2, the defendant e-mailed Alptekin
13 to tell him that we have high confidence on the
14 direction of the work and that you, MF, and I are the
15 only cleared entities on this at this time.

16 Two days later the defendant sent Alptekin
17 another e-mail, also with the subject line Truth. He
18 said that precision investigative work takes off the
19 mask layer by layer until the real picture can emerge.

20 He then offered what he described as a real
21 word analogy which he would repeat throughout this
22 project. The analogy was a description of a
23 soft-spoken cleric sitting under an apple tree near a
24 chateau in France in 1978 who claimed that he was a man
25 of peace. The defendant told Alptekin that in reality,

1 this was Iatola Humani, the man who had lead the
2 Islamic revolution in Iran in 1979.

3 He told Alptekin: 37 years later, truth is
4 being revealed page by page, story by story of what and
5 who helped out the monster dressed as the soft-spoken
6 spiritual man.

7 The defendant concluded, Looking forward to
8 working together again on this important engagement.

9 Now, Alptekin sent the defendant and Michael
10 Flynn another e-mail with the subject line Truth on
11 August 8. Now, before I talk about that e-mail, I want
12 to remind you of the abbreviation that Alptekin used
13 with the defendant in that e-mail back on July 29, MC.

14 As you will hear during the course of this
15 trial, the Turkish minister of foreign affairs is an
16 individual named Mevlut Cavusoglu, MC.

17 On August 8, Alptekin told the defendant: I
18 had a long meeting with the minister of economy upon
19 the referral of MFA Cavusoglu. I explained what we can
20 offer. He agreed to discuss in general lines at the
21 council of ministers today and subsequently with PM in
22 more detail.

23 Approximately two hours later, the defendant
24 e-mailed: Thank you, Ekim, for the kind update. This
25 is an important engagement, and we will give it

1 priority on our side.

2 On August 10, less than a month after the
3 attempted coup, Alptekin sent the defendant and Michael
4 Flynn another e-mail. The subject, Truth. He told the
5 defendant that he was thrilled at the prospect of
6 working together.

7 He then advised: I met with the MFA and
8 explained our proposed approach. He is receptive and
9 indicated he would like to meet with us during his
10 upcoming visit to D.C.

11 Alptekin also attached a *New York Times*
12 editorial about Gulen that was critical of the Turkish
13 government with a message that said: This article
14 shows the depth of the crisis that we are facing.

15 Then Alptekin sent the defendant and Flynn a
16 second e-mail on August 10. It also had the subject
17 Truth. It also dealt with the MFA. Alptekin told them
18 in that e-mail: Gentlemen, I just finished in Ankara
19 after several meetings today with Minister of Economy
20 Zeybekci and MFA Cavosoglu. I have a green light to
21 discuss confidentiality, budget, and the scope of the
22 contract. I am flying to L.A. tomorrow at the request
23 of MFA. Can we talk sometime early evening?

24 Now, one day after receiving that e-mail from
25 Alptekin saying he had just met with the Minister

1 Zeybekci and MFA Cavusoglu, and I have a green light to
2 discuss confidentiality, budget, and the scope of the
3 contract, the defendant sent his response. He told
4 Alptekin that he and Michael Flynn had been working on
5 the campaign design and end product. He said that I
6 did not touch the advisory support we discussed at
7 20 percent.

8 He then wrote engagement purpose: The
9 business community is engaging FIG to restore, quote,
10 confidence through clarity in the trade and investment
11 climate. The defendant bolded those words, confidence
12 through clarity.

13 Now, remember that e-mail I told you about
14 earlier from the defendant on August 2 where he told
15 Alptekin that you, MF, and I are the only cleared
16 entities on this at this time? Less than an hour after
17 responding to Alptekin's green light e-mail, that all
18 changed. The defendant sent another e-mail that
19 included, for the first time, not just Michael Flynn
20 but a second FIG employee who had not been privy to any
21 of those earlier communications involving Alptekin, the
22 defendant, and Flynn about Fethullah Gulen.

23 In his e-mail, the defendant didn't mention
24 Alptekin. He didn't mention the Turkish ministers, and
25 he didn't mention receiving the green light. Instead,

1 he claimed that we are about to be engaged by a Dutch
2 client for the above campaign. He called it Operation
3 Confidence. He said that FIG would produce a video.
4 He set out nine bullet points for what he termed Phase
5 Zero. Those nine bullet points were virtually
6 identical to the ones defendant had sent to Alptekin
7 back on July 30 when he was describing the broad
8 contours of the Truth campaign.

9 In fact, from that point forward, the
10 defendant no longer referred to this as the Truth
11 campaign. He referred to it as Operation Confidence.
12 From this point forward, he made no mention of Turkey's
13 role in this project. Instead, he claimed that
14 Operation Confidence had been undertaken for a Dutch
15 client.

16 Now, defendant also attached a revenue sheet
17 to this e-mail, and the revenue sheet said that the
18 business community is interested in bringing back
19 business confidence. The initial figures for the
20 project, which would subsequently go up, reflected that
21 FIG would receive \$450,000 from what was described as a
22 Dutch business consulting firm with 20 percent of that
23 amount subtracted for, quote, COGS, which, as you will
24 hear, stands for cost of goods sold.

25 As the evidence will also show, the defendant

1 moved quickly on this project. On August 16, he met
2 with representatives of Sphere Consulting Group, a
3 media firm here in Washington, D.C. He told them that
4 he wanted them to help produce and promote a
5 documentary style video to highlight the Fethullah
6 Gulen's network of loyalists and his influence over
7 them. He told them this effort will be funded directly
8 by private businesses seeking to improve investment and
9 business to drive a stronger economy in Turkey.

10 Even though he had been notified six days
11 earlier that he had received -- or that they had
12 received a green light from the Turkish ministers, he
13 said nothing about that in the meeting with Sphere.

14 The next day he sent a message to Alptekin
15 where he told him: We have now formed the dream team
16 and ready to engage.

17 On August 25, the defendant sent Alptekin an
18 e-mail where he told him he would send an engagement
19 letter between your company in the Netherlands and
20 Flynn Intel Group for the engagement. The defendant
21 advised he had allocated 20 percent per month as the
22 advisory support cost provided by your firm.

23 Ladies and gentlemen, you will hear about
24 these 20 percent payments throughout this trial. The
25 defendant and FIG did, in fact, send 20 percent of the

1 money that they were paid for this project back to
2 Alptekin even thorough it was Alptekin's company,
3 Inovo, that was purportedly paying for FIG's work.

4 Now, Alptekin and the defendant also had a
5 Skype exchange on August 25 where Alptekin advised: We
6 are confirmed to go. Meeting him tomorrow for details.

7 The defendant responded: All good to go.

8 Then Alptekin said: I think I'm meeting MC's
9 boss, not direct boss, but you know who. My assumption
10 based on MC's request to come to third bridge opening
11 tomorrow for final instructions. Either way, he said
12 we are a full go.

13 In response, the defendant told Alptekin: We
14 are very pleased to see that RTE is taking a decisive
15 stance in fighting radical Islam. We firmly believe
16 that RTE is uniquely qualified to take this global
17 leadership role.

18 Alptekin also asked the defendant to send him
19 a detailed CV of the general within the next 12 hours
20 that included his functions during the Iraqi war up to
21 now, and when the defendant asked about just sending a
22 profile, Alptekin told him he needed a full CV.

23 The reason he needed it was, as you told the
24 defendant, they asked for a full CV.

25 Now, several days later on September 3, the

1 defendant sent Alptekin an e-mail with the subject line
2 Confidence. He told Alptekin that General Flynn and I
3 look forward to launching this engagement. This work
4 is critical on the global scale as it relates to
5 international security at the most sensitive and
6 critical levels.

7 Attached to this e-mail was a written
8 agreement. It listed Inovo, Alptekin's company, in the
9 Netherlands as the client, and it listed FIG as the
10 advisor. The term of work was for 90 days, and the
11 compensation was listed at \$600,000 broken into three
12 \$200,000 payments. There was no mention of the
13 government of Turkey in this agreement.

14 In his e-mail to Alptekin, the defendant told
15 him, quote, We've been at work on this engagement since
16 July 31.

17 Now, as you will recall, it was actually on
18 July 30 that the defendant sent Alptekin that e-mail
19 with the subject line Truth, which contained the nine
20 bullet points for Phase Zero. That was prior to the
21 name change from Truth to Confidence. It was prior to
22 the point in time that the defendant disclosed the
23 project to anyone beyond Alptekin and Flynn.

24 As the evidence will show, whether the
25 project was called Truth in July or Confidence after

1 that point, it was always the same project, a project
2 focused on discrediting Fethullah Gulen in the eyes of
3 the American public.

4 Now, ladies and gentlemen, I want to pause
5 for just a few moments to talk about the charges in the
6 case. Now, the judge advised you about the law
7 preliminarily before we started opening, and he walked
8 you through the elements of the two offenses,
9 conspiracy and acting as an agent of a foreign
10 government, which is Title 18, United States Code,
11 Section 951.

12 Now, as you heard the judge tell you,
13 conspiracy is a partnership in crime. In this case,
14 the defendant is charged with conspiring with Alptekin
15 and others to do two particular things as part of this
16 conspiracy, which are themselves crimes: First, to act
17 as an agent of a foreign government, which I've already
18 talked about and the judge talked about; and second, to
19 make false statements and willful omissions to the
20 government.

21 Because as I'll talk about in a bit, there
22 came a point in time that the federal government,
23 specifically the FARA Unit at the U.S. Department of
24 Justice, posed questions to the defendant and Alptekin
25 about whether they were, in fact, required to register

1 because they were acting as agents of the government of
2 Turkey without notifying the attorney general.

3 As you will hear, the FARA Unit is charged
4 with helping to enforce the Foreign Agent Registration
5 Act or FARA. FARA prohibits a person from acting as an
6 agent of a foreign principal without first registering
7 with DOJ.

8 The defendant is charged in this case with
9 conspiring to make and causing others to make false
10 statements and answer to questions on the forms that
11 must be filed with the FARA unit. I'll talk about some
12 of those false statements in a bit.

13 Now, with regards to the FARA requirements,
14 as you will likely hear during this trial, in late
15 September, the defendant filed a notice under what's
16 known as the Lobbying Disclosure Act or the LDA. Now,
17 that is a different statute than FARA, and you cannot
18 file under the LDA instead of FARA if the work that
19 you're performing is done on behalf of a foreign
20 government or for the principal benefit of a
21 government.

22 In the defendant's LDA filing in September,
23 he did not mention the government of Turkey or the
24 country of Turkey or Gulen or Alptekin or anything
25 about the green light e-mail he had received following

1 the meeting Alptekin had with the Turkish ministers.
2 Instead, his filing stated only that the client was
3 Inovo, a Dutch company.

4 But let's get back to Fethullah Gulen and the
5 Confidence campaign. Over the next several months, the
6 defendant and Alptekin and a number of other
7 individuals hired by FIG or who were employed by FIG
8 worked on this project. You will hear evidence that
9 they were laser focused on Gulen.

10 There were weekly conference calls with
11 Alptekin. They investigated Gulen's charter schools
12 here in the United States. They tried to determine if
13 there was any evidence to support a criminal referral.
14 They sought to lobby members of Congress. In fact, as
15 part of that lobbying effort, they even put together a
16 board game that looked like Monopoly but was called
17 Gulenopoly. Instead of squares saying things like
18 community chest and boardwalk, the game said things
19 like extradition and chance. You attempt a coup in
20 Turkey killing 265 people.

21 They shot a *60 Minutes* style documentary
22 about Gulen where they interviewed senior Turkish
23 figures, which was never completed. They argued that
24 Gulen was behind the July 15 coup and that he should be
25 extradited back to Turkey. The defendant repeatedly

1 compared Gulen to that soft-spoken cleric sitting under
2 that apple tree near a chateau in France in 1978 just
3 as he had first done in that e-mail to Alptekin back on
4 August 2.

5 Now, FIG's Gulen campaign really did last for
6 about 90 days. Now, I won't go through all of the
7 evidence right now, but I want to talk to you about
8 three final things, payment, the New York meeting, and
9 the op-ed.

10 So let's start with the payments. As you
11 heard earlier, the total contract for this project was
12 \$600,000 over three months.

13 On August 30, Alptekin sent the defendant a
14 message where he told him: I will be depositing the
15 total 200K on the FIG account.

16 The next day, the defendant asked him: Can
17 you please send me the name and address of your company
18 who will be our client?

19 Alptekin told him it was Inovo BV at an
20 address in the Netherlands.

21 Now, at this point, the written agreement for
22 the Gulen project was still a work in progress. On
23 September 8, Alptekin sent the defendant a message
24 where he told him: We'll send the agreement. Just
25 left PM's office.

1 The next day Alptekin told the defendant: I
2 have the money but need to deposit it ASAP before the
3 banks close.

4 That was September 9. That same day,
5 Alptekin sent the defendant another message where he
6 told him: Since I had to wire from my personal
7 account, I suggest we alter the agreement to an
8 agreement between FIG and my person while Inovo
9 invoices for services provided to FIG. What do you
10 think?

11 In fact, the evidence will show that on
12 September 9, \$200,000 was wired from Ekim Alptekin in
13 Turkey to FIG's bank account here in the United States.

14 But what about Alptekin's statements about
15 invoices for services provided to FIG? As you'll see
16 during the trial, the first written agreement listed
17 Inovo as the client and FIG as the advisor, which
18 indicated that FIG was the one providing services to
19 Inovo, the client.

20 But three days after that \$200,000 was wired
21 to FIG from Turkey, the defendant sent Michael Flynn's
22 son two e-mails. In the first, he told him: We need
23 to wire 40K to Mr. Ekim Alptekin. He is our outside
24 advisor on the Confidence project.

25 In the second, he told him: Please find a

1 general scope advisory agreement for Ekim Alptekin. We
2 need this to create an audit trail on properly
3 documenting this relationship.

4 Attached to this e-mail was a second written
5 agreement. Even though it was very similar to the
6 first, this one now listed Alptekin as the advisor and
7 FIG as the client. In a period of ten days, the roles
8 had been reversed. FIG had gone from being an advisor
9 to a client. Who were they supposed to be the client
10 for now? Ekim Alptekin.

11 Now, this brings me back to the allegation
12 that the defendant and Alptekin conspired to make false
13 statements in the FARA filing. The defendant is
14 charged with conspiring to have the FARA filings say
15 that the payments from FIG to Inovo were refunds for
16 lobbying the public relations work that FIG did not do.
17 As you will see, if these were payments for lobbying
18 work that was not performed, the defendant and Alptekin
19 didn't allow much time to perform the work.

20 The time between the wires into FIG and the
21 wires back out to Alptekin were really short. How
22 short? FIG received that first \$200,000 payment on
23 September 9, and they wired \$40,000 back to Alptekin in
24 the Netherlands four days later. In that wire, they
25 listed the purpose not as a refund but as a consultancy

1 fee.

2 Not only that, but two days after receiving
3 the \$40,000 that was supposedly for lobbying work not
4 performed, Alptekin contacted the defendant and asked
5 him to do what? You guessed it. Lobbying. He
6 enclosed a new story about congressional hearings
7 regarding the coup attempt in Turkey. He said that,
8 quote, our embassy lobbyist had told him that
9 Congressman Rohrabacher in California thought President
10 Erdogan orchestrated the coup and he didn't think that
11 Gulen was dangerous.

12 Alptekin asked the defendant if he could
13 contact Rohrabacher or perhaps his boss, Ed Royce. The
14 defendant promptly responded that he had called
15 Rohrabacher and we are on it.

16 He said he had a meeting scheduled with him
17 and that, quote, it is important for him to know the
18 full story.

19 But back to the money. In October, Alptekin
20 wired the second payment. This time it was \$180,000
21 into FIG's account on the 11th, and FIG wired \$40,000
22 back to Alptekin on the 17th. This time the purpose
23 was listed in the wire not as a refund but as
24 consultancy fee, Project Confidence.

25 For the third payment, there was no lag time

1 at all between the wire in and the wire out. Instead,
2 on November 10, the defendant e-mailed Alptekin to say,
3 I do recognize that this month's service from Inovo to
4 FIG amounts to \$55,000.

5 This time he told Alptekin that the money was
6 for, quote, research and consultation services.

7 Four days later Alptekin simply wired to
8 FIG's account an amount that represented \$200,000 minus
9 that \$55,000. But as you'll see from the evidence in
10 this case, while the defendant and Alptekin
11 communicated frequently about money, there were no
12 communications between the defendant and Alptekin where
13 they described those payments as refunds for lobbying
14 work that was not performed. There were no written
15 agreements between them in which they agreed to refund
16 money for lobbying work that was not done.

17 As you heard before, lobbying Congress about
18 Gulen was one of the things that the defendant actually
19 did. He tried to convince members of Congress that
20 Gulen was a terrorist, that he was responsible for the
21 coup in July, and that he should be extradited to
22 Turkey.

23 Those were the payments. Now let's talk
24 about the New York meeting. As early as August 30,
25 Alptekin told the defendant: We are also scheduling to

1 meet with MF and MC and perhaps even RTE in third week
2 of New York. We'll keep you posted.

3 On September 6, the defendant e-mailed Flynn:
4 Client is seeking a high-level meeting in NYC on
5 September 19 or 20.

6 However, by the 11th of September, it
7 appeared that the meeting might not occur. In a Skype
8 communication, Alptekin told the defendant: Please
9 make sure MF does not communicate the meeting denial as
10 motivated by me or anyone inside the government of
11 Turkey.

12 The next day, though, Alptekin told the
13 defendant: Just spoke to MC. There is a chance the
14 meeting might be a little earlier on the 19th.

15 Ultimately, that meeting did take place. The
16 day before the defendant e-mailed talking points to
17 Flynn with a message that read: I have limited
18 distribution to you and Ekim at this time.

19 The talking points focused on Gulen, and they
20 included that familiar apple tree analogy.

21 As the evidence will show, the defendant was
22 correct when he described the meeting as high-level.
23 While Turkish President Erdogan did not attend, Turkish
24 minister of foreign affairs, Mevlut Cavusoglu, MC, and
25 Turkish minister of energy and natural sources, Berat

1 Albayrak, Erdogan's son in-law, were both at that
2 meeting.

3 Now, this brings me back to two of the false
4 statements from the indictment. The defendant and
5 Alptekin are charged with conspiring to provide false
6 information in the FARA filing about that New York
7 meeting. Specifically, the defendant conspired to
8 falsely state in the FARA filing that meeting had
9 nothing to do with Project Confidence and was instead
10 in furtherance of an abandoned project, Truth, that was
11 distinct from Project Confidence.

12 But in an e-mail the defendant sent to
13 Michael Flynn ten days before that hearing, he told him
14 that the meeting would be with a, quote, high-level
15 audience, cabinet-plus level related to Confidence.

16 Alptekin for his part claimed in the FARA
17 filing that the meeting in New York was for the purpose
18 of understanding better the political climate in Turkey
19 at the time as background for the project. The
20 defendant also repeated that same claim to the
21 government for purposes of the FARA filing.

22 But two days after the meeting, the defendant
23 sent Michael Flynn an e-mail with the subject
24 CONFIDENCE all capitalized. In the e-mail, he said
25 that the feedback from Alptekin following the meeting

1 was generally positive, but the defendant had some
2 concerns about expectations that he characterized as
3 unreasonable.

4 The defendant told Flynn: I will find out
5 more precisely what has caused this elevated
6 expectation on their side tomorrow.

7 Despite the defendant's comment about
8 elevated expectations on their side and how he would
9 try to find out what had caused it, after the New York
10 meeting, nothing changed. The focus remained on
11 discrediting Fethullah Gulen.

12 Finally, let's talk about the op-ed. As you
13 will hear, one of the only items FIG produced for this
14 project was an op-ed that was published in *The Hill*
15 newspaper about Gulen. While it didn't get published
16 until early November, it was a topic that was
17 frequently discussed throughout the projects. In fact,
18 on September 15, four days before that meeting in New
19 York, Alptekin sent the defendant a message where he
20 told him: MC's guy who was read into Project
21 Confidence advised me to include an op-ed that FIG
22 would get published under my name, but I didn't raise
23 it as this advise aims to help me score points in
24 Turkey more than anything else.

25 But despite that, as they went forward, the

1 op-ed continued to be a point of discussion. It was
2 discussed in the weekly calls with Alptekin. It was
3 mentioned in materials prepared by FIG to be used in
4 those calls. Finally, in early November, the defendant
5 began to circulate a draft of the op-ed that would be
6 published under Michael Flynn's name.

7 On November 2, immediately after a
8 face-to-face meeting with Alptekin where he complained
9 bitterly that FIG had not produced anything to dirty up
10 Gulen, the defendant sent Alptekin a draft and told
11 him: A promise made is a promise kept.

12 He also asked Alptekin for his feedback.

13 Two days later the defendant sent a second
14 draft of the op-ed to Alptekin saying that it would be
15 published on Monday.

16 The defendant Alptekin that the United States
17 needs to show Turkey serious support.

18 Now, that brings me back to another false
19 statement alleged in the indictment. As part of the
20 conspiracy to make a false statement, the defendant is
21 charged with falsely stating in the FARA filing that
22 Alptekin did not want the op-ed published. As for
23 Alptekin, he's charged with falsely stating that he had
24 not been consulted on the op-ed and that he would have
25 opposed it if he had been consulted.

1 However, the day after the defendant sent the
2 article to Alptekin and told him it would be published
3 on Monday, Alptekin responded: The general is right on
4 target.

5 In fact, the only issue he took with the
6 op-ed was to point out two spelling mistakes where the
7 names President Erdogan and Gulen were misspelled.

8 Now, the defendant and Alptekin talked about
9 the op-ed in the FARA filing. They were charged with
10 falsely stating that on his own initiative, Michael T.
11 Flynn published an op-ed in *The Hill* on November 8,
12 2016, that related to the same subject matters as the
13 Flynn Intel Group work for Inovo BV. Neither Inovo BV
14 nor any other person requested or directed publication
15 of the op-ed.

16 However, on November 3, the defendant sent
17 Michael Flynn a draft of the op-ed where he told him,
18 quote, Hank Cox cleaned up my draft and added about 150
19 words.

20 While the defendant asked for him to make any
21 changes he saw necessary, the version that the
22 defendant described as my draft on November 3 was very
23 similar to the one that was ultimately published.

24 On November 8, 2016, Election Day, an op-ed
25 was published in *The Hill* newspaper under Michael

1 Flynn's name entitled *Our Ally Turkey is in Crisis and*
2 *Needs Our Support*.

3 The same apple tree analogy that the
4 defendant first used with Alptekin in August was
5 included. The article characterized Gulen as a shady
6 Islamic mullah who should not be given safe haven in
7 this country.

8 Ladies and gentlemen, you will see that
9 op-ed. You'll see that it never said that it was
10 published on behalf of Turkey or even Inovo. You will
11 hear testimony that it was not included in the
12 defendant or FIG's FARA filing as is required by law.
13 A promise made is a promise kept.

14 Now, ladies and gentlemen, as the judge told
15 you, opening statement is an opportunity for both sides
16 to provide a preview of some of the evidence in the
17 case. I have attempted to give you that preview this
18 afternoon. But to repeat what the judge just said,
19 anything I tell you is not evidence. What the defense
20 will tell you in their opening is not evidence. You
21 will see more documents and more exhibits than I've
22 described, and you will hear from a number of
23 witnesses. That is the evidence in this case that you
24 will have to weigh and consider.

25 At the end of all of that evidence, my

1 colleague, Mr. Gillis, will stand here before you and
2 make the government's closing argument. At that time,
3 he will ask that you find the defendant guilty of the
4 two charges in the indictment, conspiracy and acting in
5 the United States as an agent of a foreign government
6 because at that time, the government will have proven
7 his guilt beyond a reasonable doubt.

8 That brings me to your role in all of this.
9 You are the finders of fact in this case. You will
10 ultimately determine the defendant's guilt or innocence
11 after hearing all of the evidence in this case. The
12 duty that you-all have accepted is incredibly important
13 and is a powerful part of our criminal justice system.
14 So on behalf of my colleagues and the United States
15 government, I want to thank you on behalf of us for
16 your time and your attention and for the hard work that
17 you will put in on this case.

18 Thank you very much, ladies and gentlemen.

19 THE COURT: Thank you, Mr. Gibbs.

20 Mr. Trout.

21 OPENING STATEMENT BY MR. TROUT

22 MR. TROUT: Thank you, Your Honor. It's not
23 a convenient time to have lost my voice.

24 He went to a lawyer. He asked the lawyer:
25 Can you help us file under FARA? We need to file under

1 FARA.

2 After the lawyer asked a couple of questions,
3 the lawyer said: You shouldn't file under FARA. You
4 should file under the Lobbying Disclosure Act instead,
5 which the lawyer then did.

6 Now, the government made no mention of this.
7 So let me say that again. He went to a lawyer
8 specifically for help to do the very thing that the
9 government said he was hell-bent not to do. And the
10 only reason he didn't file under FARA, which is what he
11 had gone to the lawyer for help on, is that the lawyer
12 told him he shouldn't do that, that he should file
13 under the Lobbying Disclosure Act.

14 Now, the "he" that I'm referring to is Bijan
15 Rafiekian, the defendant in this case. That's the name
16 that he was charged with by the government. That's his
17 formal name, but to most of the people who know him --
18 and you will see documents that refer to him in this
19 way -- he is known as Bijan Kian. I will probably
20 refer to him simply as Bijan for simplicity.

21 Good afternoon, ladies and gentlemen of the
22 jury. My name is Bob Trout. I am here with my
23 colleagues, Stacey Mitchell and Mark MacDougall. We
24 represent Bijan Kian.

25 Bijan never conspired with anyone to violate

1 the laws of this country. He never sought to avoid
2 registering under FARA. He never conspired with anyone
3 to act as a foreign agent without giving proper notice
4 to our government, and he never conspired with anyone
5 to give false information on the FARA forms that
6 Michael Flynn signed and filed on behalf of Flynn Intel
7 Group.

8 Now, let me tell you a little bit of
9 something about Mr. Kian, Bijan. He's
10 Iranian-American, born and raised in Teheran. He came
11 to this country a short time before the 1979 Iranian
12 revolution when Ayatollah Khomeini, an Islamist, came
13 to power and turned the Iranian society upside down.
14 He became a U.S. citizen, worked hard to integrate
15 himself into the life, and the culture and the society
16 of America.

17 He threw himself into public service in
18 California, met some important republicans along the
19 way, and eventually, he was appointed by President
20 George W. Bush and confirmed by the senate to be one of
21 five independent directors of the Export-Import Bank of
22 the United States.

23 Bijan dearly loves this country. He has some
24 very strongly held views about the Islamists who came
25 to power in Iran in 1979 and about the Ayatollah

1 Khomeini and about others whom he believes are cut out
2 of the same cloth.

3 Now, in his strongly held views about the
4 national security threat imposed by Islamists, he
5 shares common ground with a person who had become his
6 business partner, Michael Flynn. General Flynn was a
7 retired three-star general. He was a -- well, he was a
8 three-star general. He was the director of the Defense
9 Intelligence Agency at the Pentagon. He was a very
10 senior leader in the Pentagon.

11 He retired in 2014, and in 2015 -- this was
12 well before General Flynn became famous for his "lock
13 her up" warm-up act during the Trump candidacy. Flynn
14 and Bijan joined forces and formed the consulting
15 company of Flynn Intel Group.

16 They actually -- neither of them had
17 experience really or knowledge about the day-to-day
18 management of a successful business. They knew
19 important people, and they expected to be successful
20 because of the connections that they had.

21 One of Bijan's connections was a Turkish
22 national living in Turkey by the name of Ekim Alptekin.
23 Mr. Alptekin was a very successful businessman. He was
24 actually a dual citizen of Turkey and Holland. He was
25 a very successful businessman there, and he was a

1 leader in Turkey of what was the equivalent of the
2 Turkish chamber of commerce.

3 As you have heard, there was a coup in July
4 2016 in Turkey. A short time thereafter, Bijan and
5 Mr. Alptekin were talking about what had happened in
6 Turkey discussing who was behind the coup and what the
7 repercussions were for Turkey and, particularly, the
8 economic and political stability in Turkey. Obviously,
9 when there is a coup, there is a lot of dislocation, a
10 lot of uncertainty, and a lot of economic instability
11 that goes along with that.

12 So they were talking about that, and it was a
13 commonly held view in Turkey among various -- certainly
14 among the Turkish leadership, as well as many of the
15 Turkish citizens, Mr. Alptekin included, that the
16 person who was behind the coup was Fethullah Gulen.

17 Now, Mr. Alptekin was a private citizen in
18 Turkey, and he has views that, in some respects, are in
19 line with his government. In that way, you will see
20 that the private citizens of Turkey are no different
21 than the private citizens in any country. Sometimes
22 they agree on the policies of their government, and
23 sometimes they don't.

24 In this case, Mr. Alptekin clearly and
25 energetically agreed that Gulen was a source of

1 instability in Turkey. So Mr. Alptekin and Bijan began
2 talking about a business opportunity, and that business
3 opportunity would be to market to the Turkish
4 government the idea of an investigation of Gulen to
5 further the Turkish government's expectation and hope
6 in advancing their extradition efforts to get Gulen
7 back. This, according to Alptekin and Bijan, was a way
8 of stabilizing the situation in Turkey once they
9 identified what the source of the problem was, Gulen.

10 So they talked about this, and one of the
11 ideas that they agreed on was that they would try to
12 get Turkey to hire FIG, no question about it. They
13 wanted Turkey to hire FIG. And Alptekin wanted to be,
14 essentially, a consultant to FIG on the ground in
15 Turkey. So Turkey would hire FIG. FIG would then hire
16 Alptekin as a consultant on the ground in Turkey to
17 interface as necessary. So there would be a fee going
18 back to Alptekin. That was the plan, and that was what
19 was being discussed in the summer and early fall of --
20 July and August of 2016.

21 There was some reason to be optimistic.
22 Alptekin was having conversations with -- or at least
23 he said he was having conversations with various
24 Turkish leaders. Bijan was not party to those
25 conversations. He only knew what was being

1 communicated to him by Alptekin. But at a certain
2 point, it switched. Turkey was not going to do it.
3 Alptekin was going to do it. Alptekin basically said,
4 I am going to do this.

5 He was an important business leader in
6 Turkey, and he obviously was interested in enhancing
7 his own stature with the leadership. He decided that
8 because the leadership was so interested in going after
9 Gulen, that he would advance his own interest by
10 essentially being the person who would get FIG involved
11 and help. As I say, Bijan was not party to any of
12 those conversations, and he doesn't know why.

13 But -- and this is something else you didn't
14 hear from the government -- Turkey had already hired
15 someone else to do this work. In 2015, Turkey openly
16 hired and engaged a law firm in the District of
17 Columbia by the name of Amsterdam & Partners to
18 investigate Gulen and to work to get him extradited
19 back to Turkey. They couldn't have been more open
20 about it. Amsterdam & Partners filed a FARA form and
21 openly disclosed that they had been hired by Turkey to
22 do this work.

23 Amsterdam & Partners couldn't have been more
24 public about the fact that they were doing this work.
25 In fact, as you will see, they published a big book

1 titled *Empire of Deceit, An Investigation of the Gulen*
2 *Charter School Network, Book I*, Amsterdam & Partners.

3 Here's the inside flap: The Republic of
4 Turkey engaged Amsterdam & Partners to conduct a
5 comprehensive accounting of all Gulenist-controlled
6 chartered schools within the U.S. to document the
7 breadth and scope of the Gulenist network.

8 The material is distributed by Amsterdam &
9 Partners on behalf of the Republic of Turkey.

10 So it turns out Turkey had actually already
11 hired someone to do this work back in 2016. That
12 contract that Turkey had with Amsterdam & Partners,
13 which you might be able to see in the evidence, was
14 still ongoing throughout this entire period of time.

15 But Bijan didn't know anything other than
16 that Alptekin wanted to hire FIG at a cost of \$1,000
17 for three months of work.

18 So in September 2016, FIG and Inovo, which
19 was Alptekin's personal company, signed this agreement
20 for FIG to do this work. He was focused on, as they
21 saw it, an examination of Gulen and his impact on the
22 economic and political instability in Turkey.

23 So they sign the contract, and then what
24 happened is Bijan, in a very short period of time,
25 received an e-mail from an individual who was going to

1 be working on this. His name was James Courtovich, and
2 the e-mail made reference to FARA. So Bijan went
3 looking for a lawyer to help with understanding FARA
4 and getting registration under FARA. He eventually
5 ended up with a lawyer by the name of Robert Kelley.
6 He had experience in FARA. He would actually become
7 the general counsel of FIG.

8 Bijan went to Mr. Kelley, and he said: We
9 need to file under FARA. Will you help us put together
10 the registration forms for FARA?

11 Mr. Kelley asked him some questions,
12 determined from his answers that the client was not the
13 government of Turkey but was Inovo, and Mr. Kelley
14 said: Well, you shouldn't file under FARA. You should
15 file under the Lobbying Disclosure Act instead.

16 Mr. Kelley then filed on his own the Lobbying
17 Disclosure Act that you will see in this case. So that
18 was done in September 2016.

19 Now, the question is -- the government claims
20 that there is this conspiracy and that this project
21 involving Gulen is the result of the conspiracy. You
22 will recall Mr. Gillis talked about Bijan and his
23 associates failed to disclose; Bijan and his associates
24 lied on the form; Bijan and his associates acted as
25 agents of a foreign government.

1 So let's look at who those associates were.
2 Well, taking the lead in the case was a former
3 three-star general, a retired three-star general,
4 former director of the Defense Intelligence Agency.
5 That was Michael Flynn. You will find that all of the
6 people who are associated in this enterprise were solid
7 citizens.

8 One of them, Bryan McCauley, had a 35-year
9 career in the Federal Bureau of Investigation. He rose
10 to be the deputy assistant director of the Operations
11 Division of the FBI. So that was one of the associates
12 that Mr. Gillis was referring to who was acting as an
13 agent of a foreign government.

14 Mr. McCauley and Mr. Flynn, as well as
15 Mr. Kian, were all present at the meeting in New York
16 that Mr. Gibbs described. At no time after that
17 meeting in New York or at any other time did
18 Mr. McCauley, Mr. Flynn, or anyone else ever say, Hold
19 it. We're representing Turkey here. We've got to file
20 under FARA.

21 That never happened. At no time during the
22 entire project or at any time thereafter did anyone --
23 this former FBI agent, this retired general -- ever
24 say, Time-out. We're doing something illegal. We're
25 in the middle of a criminal conspiracy. I want out.

1 That did not happen.

2 The government here claims that FIG was
3 acting under the direction and control of the
4 government of Turkey. The government claims that Bijan
5 had agreed to act under the direction and control of
6 Turkey. There is no question that some of what FIG was
7 doing was aligned with the thinking of Turkish
8 leadership. There's no question about that just as
9 there was no question that Alptekin's thinking aligned
10 with Turkish leadership, at least on the question of
11 Gulen.

12 So let's look at the evidence on that issue.
13 First, the only evidence that you will see is payments
14 were made from Alptekin's bank account to FIG's bank
15 account. You will see no evidence of any payment made
16 by Turkey to Alptekin. You will see no evidence of any
17 payments made by Turkey to any company that Alptekin
18 controlled. The only evidence in the case of any
19 payments will be payments made by Alptekin's company to
20 FIG.

21 Second, you will recall the meeting in New
22 York in September 2016. It was September 19, 2016.
23 There was a meeting in New York. Bijan was there.
24 Flynn was there. McCauley was there. James Woolsey
25 was there. The meeting lasted no more than a half an

1 hour. There were certain Turkish leaders that were
2 there, Turkish officials who were there. The meeting
3 was set up by Alptekin.

4 At the meeting, there was no discussion of
5 this contract. There was no request by any Turkish
6 official for FIG to do anything. It didn't come up.
7 Yes, they talked about Gulen. Yes, they talked about
8 what a threat they regarded him, but the subject of the
9 contract with FIG between Inovo and FIG never came up.
10 The meeting lasted 15, 20 minutes, and after it was
11 over, everybody went -- that was the last time that
12 anyone from FIG and Bijan, in particular, had any
13 contact whatsoever with any Turkish official.

14 Now, at no time during this meeting -- you
15 will recall I made mention of Amsterdam & Partners. At
16 no time during this meeting did any Turkish official
17 ever say, By the way, we want you to be in touch with
18 Amsterdam & Partners. We want you to coordinate with
19 them. We want to make sure you two don't work at
20 cross-purposes.

21 That never happened.

22 The evidence will also show that at no time
23 did any Turkish official ever say to anyone at
24 Amsterdam & Partners: Listen, we're also working with
25 Flynn Intel Group. We want to make sure you coordinate

1 with Flynn Intel Group. We want to make sure you don't
2 work at cross-purposes with Flynn Intel Group.

3 That never happened.

4 So one of the deliverables of Flynn Intel
5 Group you've heard about -- Mr. Gillis made reference
6 to it -- was a board game called Gulenopoly. It sounds
7 goofy. It was goofy. Spoiler alert here: Gulenopoly
8 was not the brain child of President Erdogan in Turkey.
9 And when you look at Gulenopoly, the product of the
10 work that FIG did for Alptekin, I want you to compare
11 it with the work product of what was done by Amsterdam
12 & Partners, the acknowledged agent of Turkey. You will
13 see a difference as you examine the evidence.

14 You will also hear in the evidence that there
15 are any number of instances not only where FIG was not
16 acting under the direction and control of Turkey, they
17 weren't even accepting some of the direction and
18 control from Alptekin. There were times when Alptekin
19 wanted them to do something, and they refused to do it.

20 And -- this is also important -- you will
21 learn that there were instances where Flynn Intel Group
22 was actually not aligned with Turkish policy, was not
23 doing what Turkey would have wanted. Let me give you
24 an example. Recalling that Amsterdam & Partners is
25 working hard on getting Gulen extradited, you will read

1 in black and white in the memos that were created by
2 Flynn Intel Group that they came to the view that the
3 extradition effort by Turkey was counterproductive, and
4 they recommended -- they felt that what should happen
5 is Turkey should withdraw the extradition request. Of
6 course, that never happened, but that was their point
7 of view. Trust me: That was not the point of view of
8 Turkey. Turkey would never have directed or asked for
9 such a point of view.

10 So now I come to the Flynn op-ed dated
11 November 8, 2016. The evidence will show that Turkey
12 had nothing to do with this op-ed. In early November,
13 Bijan Kian wrote the first draft of the op-ed. It's
14 related to Gulen. It's related to Turkey. Bijan
15 promised Alptekin that he would let him read it, and on
16 November 2, Bijan sent a copy of the first draft of the
17 op-ed to Alptekin. There is no evidence at all that
18 Alptekin sent the op-ed to any Turkish official. There
19 will be no evidence of that at all.

20 There will be evidence that Alptekin did
21 speak with Bijan about the op-ed, and there will be
22 evidence that he expressed some concern about the op-ed
23 and that he gave advice about the op-ed. You will
24 learn that Bijan listened politely and essentially
25 rejected the suggestions and the expressions of

1 concern.

2 You will see that the op-ed, as it was
3 ultimately published under the name of Michael Flynn,
4 was essentially no different at all from the op-ed that
5 Bijan had sent to Alptekin on November 2.

6 Ladies and gentlemen, there will be no
7 evidence that Turkey received a copy of the op-ed
8 before it was published. There will be no evidence
9 that Turkey commented on the op-ed before it was
10 published, and there will be no evidence that Turkey
11 actually even knew about the op-ed before it was
12 published.

13 It was published on November 8, Election Day.
14 To everyone's surprise, Donald Trump won, and Michael
15 Flynn went from being a warm-up act for the Trump
16 campaign to being the designated national security
17 advisor for the incoming administration. The press was
18 all over this. So as a result, the Department of
19 Justice FARA Unit sent a letter to Flynn Intel Group
20 and said: Hey, we are reading about this in the press.
21 Shouldn't you have registered under FARA?

22 So they went to a law firm to get advice
23 about this: Did we register about it correctly or not?
24 But they didn't go to just any law firm. They went to
25 Covington & Burling, one of the oldest and largest law

1 firms in the city. Covington & Burling gather up all
2 of the evidence. They gathered up all of the
3 documents, including all the documents that the
4 government is going to introduce in this case to prove
5 their case. The green light memo that Mr. Gibbs
6 referred to, Covington had it. Covington looked at it.
7 The reference to the payments back and forth, the
8 reference to the idea that this was actually really
9 just a refund for work that was not being performed,
10 Covington had all of that.

11 They interviewed General Flynn. They
12 interviewed Bijan. They interviewed others at FIG.
13 They actually even got information from Alptekin's
14 lawyers.

15 They went back and forth about how they saw
16 the legal situation: Was this properly filed under the
17 Lobbying Disclosure Act? Was FARA registration really
18 appropriate?

19 They met with the Department of Justice to
20 discuss what they were thinking, what their findings
21 were, what their tentative views were. Eventually,
22 based on all of the information that they had, they
23 prepared the FARA registration forms. They made the
24 decision to file under FARA, not because they found
25 that FIG was acting as an agent of a foreign

1 government. They made the decision to file because
2 under the regulations, even if you are not acting as an
3 agent of a foreign government, if the work that you are
4 doing principally benefits a foreign government, then
5 in that circumstance, you do have to file under FARA.
6 It doesn't work to file under the Lobbying Disclosure
7 Act.

8 So even though there is nothing that
9 Covington & Burling filed that said FIG was an agent of
10 Turkey, they felt that the safer choice was to file
11 under FARA in view of the fact that it could be
12 argued -- given everything that was being done by FIG,
13 it could be argued that Turkey was the principal
14 beneficiary.

15 And so they filed FARA registration forms on
16 March 7, 2017. Those forms were signed -- all of the
17 forms that the government alleges are false were filed
18 by Michael Flynn. Bijan did not file any of them.

19 And speaking of Michael Flynn, there is one
20 last point, and it's an important point because Bijan
21 was not involved in it. In fact, he didn't even know
22 anything about it until this past Friday. You will
23 hear the government say it is in possession of multiple
24 independent pieces of information relating to the
25 Turkish government's efforts to influence United States

1 policy on Turkey and Fethullah Gulen, including
2 information relating to communications, interactions,
3 and a relationship between Ekim Alptekin and Michael
4 Flynn and Ekim Alptekin's engagement of Michael Flynn
5 because of Michael Flynn's relationship with an ongoing
6 presidential campaign -- here's the kicker -- without
7 any reference to the defendant or FIG.

8 There will be no evidence. The government
9 has conceded that there is no evidence that this
10 activity that they have now described involves Bijan.

11 So let me conclude where I began. Bijan
12 never conspired with anyone to violate the laws of our
13 country. Bijan never, ever sought to avoid registering
14 under FARA. Bijan never conspired with anyone to serve
15 as an agent of a foreign government acting under their
16 direction and control, and Bijan never conspired with
17 anyone to file false documents under the FARA
18 registration with our government.

19 Thank you.

20 THE COURT: Thank you, Mr. Trout.

21 Ladies and gentlemen, we are going to adjourn
22 for today. We'll begin with the evidence tomorrow when
23 everybody is fresh. We have had a long day.

24 So I'm going to excuse you until 9:15
25 tomorrow. Again, please make whatever travel

1 arrangements you need to get here around that time.

2 It's my intention to start at 9:30 with the evidence.

3 Again, I want to remind you that it is
4 important that you not discuss this case with anyone.
5 Obviously, your friends and family will be curious
6 about how you spent the day. Simply tell them that
7 you're instructed by the Court not to discuss it with
8 them.

9 Also, please avoid any coverage and news
10 media that you may see about the case. There's no
11 alternative other than to direct that you simply not
12 listen to anything. If you happen to hear something on
13 the radio or something comes on the television, you
14 just simply walk away from it and don't engage.

15 Again, don't conduct any research. Don't go
16 online. Don't communicate through any social
17 networking.

18 So with those instructions, you're excused
19 until tomorrow morning.

20 Thank you.

21 (The jury exits at 5:29 p.m.)

22 THE COURT: All right. We'll begin tomorrow
23 morning. What is the lineup for tomorrow morning,
24 Mr. Gibbs or Mr. Gillis?

25 MR. GILLIS: I'm sorry?

1 THE COURT: What is the lineup?

2 MR. GILLIS: Sorry, Your Honor. The first
3 witness will be Jeffrey Olson. The second witness will
4 be Suthahar Nadarajah, and the third witness will be
5 Kim Rosecrans. The fourth will be Jeffrey Gilday, and
6 then we will get to Rob Kelner.

7 THE COURT: All right. Very good.

8 Thank you.

9 We'll meet at 9:00 tomorrow in case there's
10 any issues.

11 We'll stand in recess until tomorrow morning
12 at 9:00.

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Time: 5:30 p.m.

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22 I certify that the foregoing is a true and
23 accurate transcription of my stenographic notes.

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25

/s/
Rhonda F. Montgomery, CCR, RPR